

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON FINANCE AND CLAIMS**

**Call to Order:** By **CHAIRMAN TOM ZOOK**, on March 26, 2003 at 8:00 A.M., in Room 317 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Tom Zook, Chairman (R)  
Sen. Bill Tash, Vice Chairman (R)  
Sen. Keith Bales (R)  
Sen. Gregory D. Barkus (R)  
Sen. Edward Butcher (R)  
Sen. John Cobb (R)  
Sen. Mike Cooney (D)  
Sen. John Esp (R)  
Sen. Royal Johnson (R)  
Sen. Bob Keenan (R)  
Sen. Rick Laible (R)  
Sen. Bea McCarthy (D)  
Sen. Linda Nelson (D)  
Sen. Trudi Schmidt (D)  
Sen. Debbie Shea (D)  
Sen. Corey Stapleton (R)  
Sen. Emily Stonington (D)  
Sen. Jon Tester (D)  
Sen. Joseph (Joe) Tropila (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Taryn Purdy, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 474, 3/12/2003  
Executive Action: SB 421; SB 267; SB 424; SB 323;  
SB 61; SB 458; SB 218

**EXECUTIVE ACTION ON SB 421**

**CHAIRMAN TOM ZOOK** advised the bill would create a new program at a cost of \$250,000 for the biennium.

**Motion/Vote:** **SEN. ROYAL JOHNSON** moved that **SB 421 BE INDEFINITELY POSTPONED**. Motion carried unanimously by voice vote.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 3.9}*

**EXECUTIVE ACTION ON SB 267**

**Motion:** **SEN. COREY STAPLETON** moved that **SB 267 DO PASS**.

**Motion:** **SEN. STAPLETON** moved that **SB 267 BE AMENDED (SB026701.atp)**. **EXHIBIT(fcs64a01)**

**Discussion:**

**SEN. STAPLETON** explained it is an important program with a significant cost associated with it. There was a lot of concern about the general fund. The mechanism would be monies in excess of \$45 million in timber sales.

**Taryn Purdy, Legislative Staff**, explained that the funding source is 20-9-342. The money is derived from timber sales on public trust lands. If there is any money in excess of \$45 million, it would be deposited in the teacher signing bonuses account. **HB 630, REP. ALAN OLSON'S** bill would put this money in the school flex account.

*{Tape: 1; Side: A; Approx. Time Counter: 3.9 - 8.1}*

**SEN. EMILY STONINGTON** asked if neither this bill nor **HB 630** passed, what happens to any excess money.

**SEN. MIKE COONEY** said **Senate Education** heard **REP. OLSON'S** bill and the money goes back into the principle of the School Equalization Trust.

**SEN. STONINGTON** asked **SEN. STAPLETON** what happens if both his bill and **HB 630** pass. **SEN. STAPLETON** explained \$45 million to \$52 million would go towards the teacher signing bonus; money over \$52 million would go into the flex fund. He explained that **SB 267** would create a striation of legislative intent.

**CHAIRMAN ZOOK** added it is a speculative amount of how much would be generated. The bonuses would be prorated.

**SEN. BEA MCCARTHY** asked why not put the money back into the University System BASE fund to lower tuition instead of giving signing bonuses. She also had a concern about inequity in the pay scale for teachers.

**SEN. COONEY** addressed the amendment. He added this is speculative. Tied to this bill, as well as **REP. OLSON'S** bill, is another bill in **Natural Resources** dealing with sustainable yield that would give the **Board of Land Commissioners** a little more flexibility in timber sales in hopes of raising additional revenues. He questioned **DNRC**, and \$45 million is the average sales over the last few years. If that bill doesn't pass, there's a chance there won't be money. He expressed concern about building false hopes; the funding source may not be there for several years.

*{Tape: 1; Side: A; Approx. Time Counter: 8.1 - 14.8}*

**SEN. TASH** said that **HB 537** was heard in the **Natural Resources Committee**. The timber sale target was set at \$50 million more board-foot per year; they are optimistic for the school trust fund.

**SEN. ED BUTCHER** advised the Education community is concerned there are no incentives to keep teachers in the state. He agreed this is all very speculative, but all of their budgets are speculative. He stated this is an option to address the issue. He doesn't see a problem with the approach, but sees it as a creative way to encourage using resources to address the teacher shortage.

**SEN. STONINGTON** asked if the \$45 million is appropriated. **Taryn Purdy** answered this is the amount that goes into a statutory appropriation, and is statutorily appropriated to schools. Last session, the legislature established this account, rather than it continuing to go into the general fund.

**SEN. DEBBY SHEA** asked if other states use this approach, or if they have higher starting salaries. **SEN. STAPLETON** answered it is some of both; in recent years, the states in the southwest are using bonuses. Montana is 25th in the nation on spending. This bill injects money into non-tenured teachers early in their career. Montana graduates 900 teachers per year, but 700 of them take teaching jobs out of state.

**Vote: Motion carried unanimously.**

**Taryn Purdy** explained that there have been adjustments made to the amendment. She addressed the specific changes.

**Motion/Vote:** SEN. STAPLETON moved that SB 267 BE CONCEPTUALLY AMENDED to include the language. Motion carried unanimously.

**Motion:** SEN. STAPLETON moved that SB 267 DO PASS AS AMENDED.

**Discussion:**

**SEN. TRUDY SCHMIDT** had a question on Page 1, Line 25 regarding bonuses in math, science and music. She asked if all subjects are covered by the bonus if they teach in a rural area.

**SEN. STAPLETON** replied that there are 100 that go towards rural, there are 100 that go toward math, science, and music, and 300 that go to a teacher tied to a retiring teacher at 26 plus years.

***{Tape: 1; Side: A; Approx. Time Counter: 14.9 - 25.2}***

**SEN. JOHN ESP** stated this is a good program and he will support the motion; it is one thing the legislature can do to address a need.

**SEN. STONINGTON** had a question regarding a teacher in Oregon who would love to come back to Montana, but has a huge student debt. She couldn't qualify for this because she has now taught for two years and had to go out of state to pay her debt.

**SEN. STAPLETON** said that the original intent of the bill would have included that situation. Due to fiscal concerns, the bill has been scaled back and cannot apply retroactively.

**SEN. JON TESTER** asked about the issue of re-certification and **SEN. STAPLETON** concluded that this is for first time, beginning teachers only.

**SEN. JOE TROPILA** asked if the first year teacher is making more than the second year teacher, and if there would be some dissension in the ranks.

**SEN. STAPLETON** said in his field there are people in their first year that aren't equivalent, and it also happens in the military with enlistment bonuses. In a period of two years, everybody will have caught up.

**SEN. TROPILA** submitted this isn't the military, and in the military they have to stay.

**SEN. STAPLETON** thought those educators who supported this bill took that into account. *{Tape: 1; Side: B}* Some non-tenured teachers who wouldn't be getting it because it's not retroactive might have hard feelings.

**SEN. LINDA NELSON** asked about the rural counties mentioned in the first fiscal note that were not named in the second fiscal note.

**SEN. STAPLETON** said that they had to define "rural" in the bill. His definition is any county with less than the state's average growth in population in the previous ten years. That definition included Cascade County. In the fiscal note, 378 districts qualify as rural and 63 do not.

**SEN. NELSON** asked why the counties that would not qualify are not named in the new fiscal note. **SEN. STAPLETON** said it is now by district and there are too many to name. Even if they were excluded, it would only be from 100 of the 500 eligible.

**SEN. TRUDY SCHMIDT** had a question regarding Cascade County. **SEN. STAPLETON** said that was the first fiscal note and Great Falls would not count as rural.

**SEN. COONEY** said that his concern is the under-funding of education. He expressed the concern of present teachers who were not in the mix for the bonuses. He didn't dislike the concept, but would rather find a way to properly pay all teachers and do this as well. He will oppose this bill.

**CHAIRMAN ZOOK** agreed that everyone would like to put more money into education and thought there would be a later opportunity to vote on revenue bills.

**Vote:** Motion carried 14-5 with **SEN. COONEY, McCARTHY, NELSON, SHEA,** and **TESTER** voting no by roll call vote.

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 7.5}*

#### HEARING ON SB 474

**Sponsor:** **SEN. FRED THOMAS, SD 31, Stevensville**

Opening Statement by Sponsor:

**SEN. THOMAS** said this bill is to create the Montana Gold Senior Pharmacy Program. It is patterned after a program in the state of Nevada. The issue is the well-established fact of the problem of the escalating cost of prescription drugs. The program will establish a privately run insurance mechanism. He presented a packet of information and went through a slide presentation of the same material. **EXHIBIT(fcs64a02)** The legislation proposes they take up to \$7.5 million from the tobacco settlement trust fund each year, and match it to federal funds in a 3 to 1 match. He contended if this legislation is accomplished, Montana will have one of the most expansive, successful low-income senior prescription drug program in the entire nation. They will only take actual costs from the trust fund. He explained the Constitutional provision that deals with the funding.

**EXHIBIT(fcs64a03)** He thought the number one need in the state is a prescription drug program for low income Montana seniors. He referred to (2) in Exhibit 3. Many other states have used tobacco settlement monies for this same purpose, Nevada being one of them. **EXHIBIT(fcs64a04)** Because there is a concern about the trust fund, an amendment would have to be done in the House to move from a trust fund appropriation on the bill to interest over time. He explained a chart dealing with the amendment. The second chart dealt with how the trust fund would be impacted if the amendment was adopted. **EXHIBIT(fcs64a05) {Tape: 2; Side: A}** He quoted from articles and information on Nevada's senior drug program

**EXHIBIT(fcs64a06)** and explained a copy of Nevada's online application.

**EXHIBIT(fcs64a07)**

**{Tape: 1; Side: B; Approx. Time Counter: 7.5 - 30}**

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 4.7}**

#### **Proponents' Testimony:**

**Michael Hillerby, Deputy Chief of Staff, Office of Nevada Governor Kenny Guinn**, stated that he is proud of their program. He went through a detailed presentation on Nevada's Senior RX program and explained how it works in Nevada. **EXHIBIT(fcs64a08)** He said it is a simple program, is easy to use, and has been a great benefit to the senior citizens of Nevada. 7500 seniors are currently enrolled, with a waiting list of about 1300. In the application process they discovered seniors who were eligible for Medicaid. Nevada has a prescription drug benefit, so those seniors did not utilize Nevada's Senior RX. He indicated they have a small state staff, and explained the work of the pharmacy benefit manager. One mistake they made with outreach was trying to treat it like other social service programs. They found outreach to senior centers to be effective. **{Tape: 2; Side: B}**

He explained their application form and their efforts at outreach.

**{Tape: 2; Side: A; Approx. Time Counter: 4.7 - 30}**

**{Tape: 2; Side: B; Approx. Time Counter: 0 - 3.8}**

**Betty Babcock, senior citizen**, read her testimony on behalf of those seniors who couldn't make it to testify in support of SB 474. **EXHIBIT(fcs64a09)**

**Jim Smith, Montana Pharmacy Association**, said that they support this bill, just as they supported **SB 473**. He added that they support any measure to provide meaningful assistance to seniors and treats pharmacies fairly in the marketplace. Both bills have a lot of merit, and he wasn't sure they were mutually exclusive. If this is an insurance product, he wondered if it ought to be regulated by the **Commissioner of Insurance**. Another concern for member pharmacists was the use of pharmacy benefit managers. Some of the PBM's don't treat pharmacies too well, and a lot of states are introducing legislation to regulate PBM's. He thought the bill would require some kind of interface between the insurer and **DPHHS** regarding the determination of eligibility for the program. He felt these are things that can be worked through, and they were willing to work on the issue. Pharmacists field questions from seniors all the time, and are acutely aware of the situation seniors are in.

**{Tape: 2; Side: B; Approx. Time Counter: 3.8 - 11.6}**

**Brad Griffin, Montana Retail Association**, said that he represents most of the chain drugstores across the state. He applauds the bill and offered a technical amendment. **EXHIBIT(fcs64a10)**

**John Delano, former legislator and senior citizen**, stated his support for SB 474. His drug costs this month were \$774 for him and his wife. He wouldn't qualify for the bill, but wanted to testify to help other people.

**Aidan Myhre, Montana Chamber of Commerce**, said that health insurance and health care issues are of concern to their members. More seniors are in the workforce today. The workplace is impacted when a grandchild or child has to miss work to take care of parents and grandparents. They support **SB 474**.

**Dennis Iverson, Pharmaceutical and Resource Manufacturer Association (PhRMA)**, said they stand in strong support of this bill. They understand the need and like the opportunity to do this now. This is a private sector solution with a proven track record in Nevada.

**Bill Eiker** stated that there is a definite need, and some of those needs are the result of tobacco use. He supports SB 474.

**{Tape: 2; Side: B; Approx. Time Counter: 11.6 - 18.1}**

**Opponents' Testimony:**

**Betty Beverly, Executive Director, Montana Senior Citizens Association**, stated their concern was with the privatization of social security and using the coal trust or tobacco trust. She explained their opposition to privatization and quoted from a Report for Congress. **EXHIBIT(fcs64a11)** She warned the Nevada program had not reached out to unhealthy seniors. Private market prescription drug coverage has been available to Medicare beneficiaries for more than a decade, but many seniors cannot afford Medigap policies. The Medigap policy coverage varies, and she tells seniors to look at what's affordable for them. She expressed concern for the depletion of the tobacco trust. She felt the best way to address the problem in Montana is with a purchasing pool. She urged them to vote against **SB 474**.

**{Tape: 2; Side: B; Approx. Time Counter: 18.1 - 30}**

**{Tape: 3; Side: A; Approx. Time Counter: 0 - 1.9}**

**Verner Bertleson, Montana Senior Citizens Association**, voiced his concern with taking money from the tobacco trust fund. The cost per applicant in Nevada is \$1000 and covers only a small portion of those eligible. He preferred the other bill which doesn't invade the trust and provides a prescription drug program.

**Mary Williams, Coordinator**, read from written testimony, explaining the reason for their opposition to the bill is because of the funding source.

**{Tape: 3; Side: A; Approx. Time Counter: 1.9 - 10.3}**

**Bob Salandi, AARP, Pharmacist**, stated that their support is for **SB 473**, which wouldn't break the tobacco trust. As a pharmacist, he would be happy to see any help seniors can get. He questioned whether the Nevada plan is doing the same things they would like to see for seniors. The preferred drug list would be easier to implement under **SB 473**. He hoped both bills pass out of committee so something gets through for seniors.

**Kathy McGowan, Alliance for a Healthy Montana**, said that they are also against invading the tobacco trust to support this program. She wondered if they use the trust now, would there be interest later. She stated that they would be open to further dialogue.



**Chris Christiaens, Montana Chapter, National Association of Social Workers**, advised they reluctantly oppose this bill. Their concern is the time frame left in this session to work out a compromise. Another concern is the protection of consumers, and they also believe any insurance company operating in the state of Montana needs to be regulated by the Insurance Commissioner's office. His concern with the Nevada plan is with seniors using mail order pharmacies. Good information as to how to take a medication and it's side effects is going to come from the local pharmacist, and they believe that should be a component in the bill. He felt a hard look needed to be taken at evidence-based health care, established formularies, and the preferred drug list for all Montanans, not just senior citizens. They have been looking at forming purchasing pools. There are eight western states, including Montana, looking at forming a consortium for purchasing drugs in a purchasing pool. He urged melding the two bills together to come up with one that works for all Montanans.

***{Tape: 3; Side: A; Approx. Time Counter: 10.3 - 18.8}***

**Raymond Burke, Montana Nurses Association**, praised the attempt at a prescription drug benefit, but said that they cannot support taking funds from the tobacco trust. They look forward to finding solutions.

**Informational Testimony:**

**Jeff Buska, DPHHS**, stated that he is available to answer any questions from the Committee.

**Claudia Clifford, Insurance Commissioner's Office**, explained the insurance aspect of the bill and insurance regulation. Section 9 of the bill exempts this arrangement from insurance regulation, and that needs to be thoroughly considered. The CHIP program is a good example of the state purchasing an insurance product for health care coverage for children. It is a fully regulated product which means they assure the carrier is solvent, and her office can assist consumers with that coverage. An example of an unregulated entity in mental health services was the contract with Magellan. An RFP is set up in the bill and there is nothing that requires the entities responding to the RFP must be a regulated licensed carrier. Nevada requires the entity bidding on their program to be a regulated carrier.

***{Tape: 3; Side: A; Approx. Time Counter: 18.8 - 22.8}***

**Questions from Committee Members and Responses:**

**SEN. BARKUS** asked **Kathy McGowan** if her organization promoted the trust fund initiative. She indicated it was the organization she represents.

**SEN. BARKUS** said in the trust fund constitution it says the appropriation of the interest income and principle of the trust fund shall be used for tobacco prevention, state programs, etc., or coverages that are related to health care needs of Montana. He asked her about her testimony against using these funds for this purpose.

**Ms. McGowan** advised the trust is in its infancy stage. She wasn't a member of the group when all this happened. Part of what they envisioned was the trust gaining a little momentum before it was actually used, and they agreed not to bust the trust at this particular time.

**SEN. BARKUS** asked if she would agree or disagree that it was deceptive to sell this initiative to the people in Montana if coverage for the health care needs of Montana would be opposed at a later date.

**Ms. McGowan** advised it doesn't say that any proposal or any scheme that came forward would necessarily be what the group considered acceptable. The legislature has the final say.

**SEN. BARKUS** asked if she considered this a scheme.

**Ms. McGowan** didn't consider this a scheme; she used the phrase "proposal or scheme". She said she respected **SEN. THOMAS**.

**SEN. ESP** advised the reason for the lower threshold in the tobacco trust versus the coal trust was so it would be easier for the legislature to spend that money on programs they felt were worthy. He didn't think this was a holy trust, but one that was put aside so it could be used. He asked if she agreed.

**Ms. McGowan** said she couldn't say what other voters might have been thinking. She thought the legislature ultimately makes the decision. She suggested talking to one of the founders of the group. When she voted for it, she didn't compare it to the coal trust.

**SEN. ESP** advised the proposal is not all principle, and the interest will eventually pay for the total program. He asked about her testimony about there being interest later.

**Ms. McGowan** advised she wasn't privy to the amendments. She will take it back to the group to look at it in that context.

**{Tape: 3; Side: B}**

**SEN. ESP** asked how long it would take the \$7.5 million in the trust to earn \$22.5 million in interest. **Ms. McGowan** said she did not know. **SEN. ESP** redirected the question to **SEN. THOMAS**.

**SEN. THOMAS** advised a long time.

**SEN. ESP** advised if \$200,000 interest is earned a year, it would take 100 years to earn \$20 million. He asked about regulated versus unregulated.

**SEN. THOMAS** advised the reason for the way the bill is written is **DPHHS** regulates Medicaid, and that's where it's administrated. This is primarily an expansion of that program. They hope to match the dollars with Medicaid dollars to create as big a pool as possible. This will be regulated by **DPHHS**. If there is concern that there be duplicate regulation by the Commissioner of Insurance over the management of the prescriptions being paid, etc., he thought it could be handled. He thought **DPHHS** would have to be in the main role in regulating the program. He thought the issue was a red herring. He had no problem with backup or secondary regulation by the Commissioner's office.

**SEN. ESP** asked **Mr. Bertleson** if he viewed this program as a way to not take taxpayers' money to do something beneficial. **Mr. Bertleson** said yes. **SEN. ESP** asked if he believed the tobacco settlement funds were to pay back costs for smoking related illnesses to the state taxpayers for the funds they provided. **Mr. Bertleson** said one could take a certain circuitous route to come to that conclusion.

**SEN. ESP** advised the taxpayers are paying \$15 million a year in general fund money to take care of smoking related illnesses in the state of Montana, and part of the settlement was in compensation for years of that cost.

**Mr. Bertleson** suspected that is true and also suspected there were other elements in that particular settlement. It is a way of getting the tobacco companies to pay back for misleading information and the pain it caused.

**SEN. NELSON** asked **Mr. Hillerby** how people on the waiting list advance.

**Mr. Hillerby** indicated as long as eligibility is maintained, they can stay on the program. There is a turnover of about 200 members a month; some are dying, some become income ineligible,

and some become eligible for Medicaid. They prioritize the waiting list based on income. They have budgeted \$7.5 million, had a rebate of almost \$2 million, and their actual cost in 2003 is going to be about \$5.5 million. The \$2 million is going to be used to address the waiting list. The average cost per member in 2002 is about \$80. They are below \$65 currently, and are expecting that to go down by having tighter administrative controls.

**SEN. NELSON** asked how often they have to verify they are still low income.

**Mr. Hillerby** advised they have an annual eligibility re-verification, unless there is information from some other source..

**SEN. NELSON** asked if those on the waiting list get on the program in the order signed up.

**Mr. Hillerby** said for the original program, it's was first come, first served. The waiting list is based on greatest need first based on income and related illness. They have a waiver provision on their income requirements for cases of hardship. Less than 5% have catastrophic need.

**SEN. KEITH BALES** asked if the Nevada program gets matching federal funds.

**Mr. Hillerby** replied they are currently doing it as just a state program. They do not have a trust fund set up for this purpose. Ten percent of their tobacco money goes into a health trust fund. They are in the process of looking into Pharmacy Plus waivers and get the matching money. He noted many retirees are against using social programs. They will never see a one to one correlation between eligibility and need. They believe they can expand their program, but not to everyone that is potentially eligible.

**SEN. BALES** asked **Mr. Bertleson** at what point in time should the funds be used for health care programs.

**Mr. Bertleson** answered some would say never.

**SEN. BALES** asked if there would never be a program worthy of taking anything out of the trust fund.

**Mr. Bertleson** advised the trust fund has more potential to be kept as a trust fund with the income available through the years beyond the time that the tobacco money comes into the fund.

**SEN. BALES** asked if that is the case, why did he allow the language to be crafted that says it can be used for those programs.

**Mr. Bertleson** said he didn't write that language.

**SEN. BALES** asked if what he proposed was a smoke screen because that isn't really what he believes.

**Mr. Bertleson** said absolutely not.

**SEN. BALES** thought the language says they can use the funds, and he thought they should look at the language in the constitution rather than what people within the Alliance are saying about what's in the constitution.

**Mr. Bertleson** advised none of them tried to tell the legislature what they could or could not do; they only gave their opinion.

**SEN. SCHMIDT** asked **Mr. Hillerby** if Nevada participates in any other programs with Medicaid waivers.

**Mr. Hillerby** advised they are relative newcomers to the waiver program. They are in the process of looking at the Pharmacy Plus waiver provision to see if they can get some matching money.

**SEN. SCHMIDT** asked if they are in any multi-state purchasing group.

**Mr. Hillerby** indicated not state wide. Their mental health services does some multi-state purchasing. There are some bills in the state legislature dealing with the issue.

**SEN. SCHMIDT** asked **Jim Smith** about his testimony regarding the concerns of pharmacists with the bill.

**Mr. Smith** advised one concern was about how some members were treated by pharmacy benefit managers over the past ten years. If this bill is to go forward, they wanted to be involved in those discussions. Another concern was how eligibility will be determined, and how that can be communicated to the insurer on an ongoing basis. The issue of regulation remains a question. **SB 474** is a hybrid between a private insurance marketplace program and a public program, and the concerns were about eligibility and regulation.

**SEN. SCHMIDT** asked **SEN. THOMAS** about the poll that was done.

**SEN. THOMAS** advised Moore and Associates did the poll in January. He addressed her concern that the department could contract with a PBM to administrate its program; the department can only utilize a contract with a PBM in order to develop this program. The department is authorized to enter into a contract with a private insurer to offer prescription drug coverage.

**SEN. SCHMIDT** asked who paid for the poll.

**SEN. THOMAS** asked Pharma, an organization he works with, to pay for the poll. **Mr. Iverson** is their local representative.

**SEN. STONINGTON** asked **Mr. Hillerby** if they contract with a PBM.

**Mr. Hillerby** said they contract with an insurance management company that contracts directly with a pharmacy benefit manager.

**SEN. STONINGTON** asked about the difference between the pharmacy benefits management company and an insurer.

**Mr. Hillerby** explained the pharmacy benefit management company negotiates with pharmacies and they are fully paid. Fidelity Security Life Insurance is the re-insurer. This year Nevada will pay up to \$66 per member per month, and anything over that will be paid by the insurance company.

**SEN. STONINGTON** thought he gave a figure of \$82 to \$85 a month per enrollee.

**Mr. Hillerby** advised the \$66 was the actual cost of the prescription medications for those seniors. In addition, they are paying an administrative fee, the fees of the pharmacy benefit manager, the enrollment costs, the management costs, the 800 number, etc. \$85 was what they were paying in 2002.

**SEN. STONINGTON** stated he said the average claim was \$46.

**Mr. Hillerby** advised they averaged \$45 a month and they received a rebate. From 2003 forward, they are only paying the actual costs for the members.

**SEN. STONINGTON** asked **Mr. Hillerby** how they plan to curb administrative costs.

**Mr. Hillerby** stated they are considering contracting directly with the re-insurer. They were at the mercy of the market early on.

**SEN. STONINGTON** asked if their legislation prohibited requiring or requesting physicians switch from a medication previously used to another.

**Mr. Hillerby** advised that is not an issue that came up. They tried to keep their legislation as simple as possible. Their legislation specifies co-pays and has a preferred drug list.  
{Tape: 4; Side: A}

**SEN. STONINGTON** asked if the insurance company they use is regulated in Nevada.

**Mr. Hillerby** stated if a company is to sell insurance in Nevada, they have to be licensed in Nevada.

**SEN. STONINGTON** asked **SEN. THOMAS** if he deliberately drafted this so the insurance company would not be regulated by the state of Montana.

**SEN. THOMAS** advised **Greg Petesch, Legislative Services** felt this was the right way to do it because this program is an expansion of Medicaid.

**SEN. STONINGTON** asked where re-insurance fits into his concept.

**SEN. THOMAS** advised re-insurance is used primarily to cover catastrophic events. The re-insurance protects the management entity if they went past a certain point of loss.

**SEN. STONINGTON** asked if it would make more sense to word the statute for flexibility instead of using the words "a private insurer."

**SEN. THOMAS** said they felt the definition was wide enough to allow proposals from different entities. The manager can decide if they want to re-insure, and that would be included in their proposal.

**SEN. STONINGTON** said she had some resistance to using trust fund money for this. She asked if he was amenable to blending this bill with **SEN. ELLIOTT'S** bill.

**SEN. THOMAS** wanted to get something accomplished, and wanted to use the interest only of the trust fund over time.

**SEN. STONINGTON** said interest dollars from the trust fund are currently going into the general fund. This is a new program that would be in competition for general fund dollars. She asked if this was a more important program than Meals on Wheels, etc.

**SEN. THOMAS** explained the interest money that is being spent currently will stay there. This program will only take interest monies in excess of those allocated monies in this coming biennium. That interest will be capped and the excess that grows over time will be used.

**SEN. COONEY** asked what the trust will ultimately look like and will it be in place to support this program.

**SEN. THOMAS** referred to the graph (Exhibit 5). The trust fund will grow less, but not that much. The interest will take care of this program and allow for expansion down the road in future sessions. If he could figure out how to do it without the trust fund money he would. The way the trust fund was set up, this is allowable.

**SEN. COONEY** asked if there is anything in the bill that would prevent the state from moving forward with this sort of program as well as a purchasing pool.

**SEN. THOMAS** said the proposals may very well include a variety of creative ideas, etc.

**SEN. COONEY** asked what sort of premium would be needed to buy into something like this.

**SEN. THOMAS** said they anticipated the average cost would be \$85 a month for a person that does not qualify. In Nevada, that cost has been reduced to \$81.20.

**SEN. COONEY** asked if the application fee is a one-time fee. **SEN. THOMAS** advised it could be waived as well.

**SEN. SCHMIDT** asked **Ms. Beverly** about the development of the trust and how the language came about.

**Ms. Beverly** advised she was privy to that information when they first formed the Alliance and before that during the session when **SEN. DOROTHY ECK** was working to try to figure out what to do with this money. Former **Governor Racicot** had formed a Tobacco Advisory Council, and the idea of a trust was discussed there. It was negotiated that 40% of the tobacco settlement money would go into the trust, with 60% going into the general fund. The interest from the trust would be used for health care issues with a 2/3 majority vote of both Houses.

**SEN. SCHMIDT** asked the sponsor why he wouldn't want the Insurance Commissioner to be handling the program, rather than turning it over to **DPHHS**.



**SEN. THOMAS** contended this is the right place to manage and regulate this, because they are requesting and adopting the proposal and are in the best position to take care of issues that arise. If they want secondary regulation by the Insurance Commissioner's office of the program itself, he had no problem with that. Most of what the private insurer will do is process claims. It is more management, rather than an insurance product.

**SEN. SCHMIDT** asked **Mr. Buska** how this would work in his division.

**Mr. Buska** advised the applications would be submitted through **Mr. Hudson's** division to determine eligibility. His bureau would work on developing the RFP and contracting with the insurance company. They would purchase the service from the insurance company. Regulating what insurance companies do is up the Insurance Commissioner's office.

**SEN. SCHMIDT** asked if he was aware of an evidence-based practice that Oregon, Washington, and Idaho are using.

**Mr. Buska** advised Oregon has a contract with an organization to assist them in developing their preferred drug list for use in Oregon's waiver program. There are a number of states looking at this including Washington, Michigan, and Vermont.

**SEN. JOHNSON** asked what kind of rate of return they used when the charts were figured (Exhibit 5).

**SEN. THOMAS** said it was November when he asked the first study be done on this. He offered to share the full report, and didn't remember if it had that sort of data in it.

**SEN. JOHNSON** explained the reason for his question is the principle of the fund comes back where it ought to be in 2019. He asked if bigger pieces would be taken of the \$7 million early on. **SEN. THOMAS** answered yes.

**SEN. JOHNSON** said if the numbers are correct, there is roughly \$150 million in 2020. He wondered how that fits in with the reduction of the principle on a continuing basis.

**SEN. THOMAS** said the report addressed what the trust fund does just as it is, and compares it to what it would do with this program. If the mechanism is adopted in the House, interest earnings will be capped and new interest dollars above current expenditures is a variable. In 2020, new interest dollars will be available for other things. He said he would provide the data on interest earnings.

**SEN. JOHNSON** said one of his concerns is the trust within the trust for the Treasure State Endowment never has covered the needs, and they have supplied additions to the Treasure State Endowment. There are water needs etc., far in excess of that, and they have put a lot in from the body of the trust.

**SEN. THOMAS** said that is an excellent point--asking how valid is this to depend on the interest earning projection.

**SEN. LAIBLE** asked **Mr. Hillerby** about the total funding for Nevada for the 7500 participants in the program.

**Mr. Hillerby** said they have between \$7 million and \$7.5 million available.

**SEN. LAIBLE** asked about the rebate of \$1.9 million, and if that is in addition to the \$7 million or is it included.

**Mr. Hillerby** advised it is included. They get back the difference between actual and projected claims. In 2002, that turned out to be \$1.9 million which will be put back in the program to expand eligibility.

*{Tape: 4; Side: B}*

**SEN. LIABLE** asked if they get any rebates from pharmaceutical companies for these drug purchases.

**Mr. Hillerby** said it's one of the things they're looking at as part of the overall contract.

**SEN. LAIBLE** said it doesn't appear they use any matching Medicaid and asked why they would not do that.

**Mr. Hillerby** explained they were pioneering. On the national level, this is a polarized issue.

**Closing by Sponsor:**

**SEN. THOMAS** closed on SB 474, stating that this program cannot happen without the tobacco trust fund. He reiterated the need to help Montana's seniors and knew of no higher or better use for these funds. He urged them to put politics aside. This is the bill that reaches far more people with far more assistance than any other proposal.

*{Tape: 4; Side: B; Approx. Time Counter: 2.1 - 7.6}*

*The Committee adjourned from 12:06 p.m. and reconvened at 5:40 p.m. that evening.*

**EXECUTIVE ACTION ON SB 424**

**CHAIRMAN ZOOK** asked **Madalyn Quinlan, Office of Public Instruction**, to address the transportation situation.

**Ms. Quinlan** explained **SB 424** uses half of the **HB 124** block grants which currently go to schools for transportation to fund an increase in mileage rates. She contended increasing the mileage rate would not force schools to spend more.

**CHAIRMAN ZOOK** advised the fiscal note said counties would be required to match the \$1.7 million increase in state funding for pupil transportation, and it is provided through a non-voted county wide property tax levy.

**Ms. Quinlan** stated the county tax will go up, but the district tax will go down.

**CHAIRMAN ZOOK** advised that is the problem some of them have with the bill.

**SEN. ESP** asked if they are pulling some money out and making the counties match that.

**Ms. Quinlan** said that is correct, but pointed out the district levy is a non-voted levy.

**SEN. ESP** stated some districts could choose to spend less, but some districts could choose to spend all of the money.

**Ms. Quinlan** said the district sets it's transportation budget at whatever level the trustees think is appropriate. There is state money coming in, there is a county levy, and there is the district permissive levy. If more of the obligation shifts to the state and county, the budget is set at whatever level it has to be.

**SEN. ESP** asked if they could choose to spend it on things like district tuition, etc.

**Ms. Quinlan** advised the transportation fund is designated to pay for costs associated with transferring students to and from schools. Bus depreciation is a separate fund. A bill passed last session allows school districts to transfer money from one fund to another, if it's for a similar purpose.

**CHAIRMAN ZOOK** advised taking that part out of the bill.

**Motion/Vote:** **SEN. NELSON** moved that **SB 424 BE RECONSIDERED.**

**Motion carried unanimously** by voice vote.

**Motion:** **SEN. ESP** moved that **SB 424 DO PASS.**

**Motion:** **SEN. ESP** moved that **SB 424 BE AMENDED.**

**Discussion:**

**SEN. ESP** stated that his amendment would delete Sections 4 and 5.

**Ms. Quinlan** added if the purpose is to remove all changes to transportation, in addition to deleting Sections 4 and 5 on Page 7, Section 6, Line 19 would also need to be amended.

**SEN. NELSON** expressed the desire to hear **Chris Goss's** opinion. **Chris Goss, Governor's Office**, said that the amendment would make the bill more appealing, but they would like to see some of the suggestions of the council get through.

**SEN. STONINGTON** asked **SEN. NELSON** to review the effect of the amendments. **SEN. NELSON** said taking out the definition would put weighted rider-ship back in the bill. This would again be paying for students, and the bill as written would pay per bus.

**SEN. STONINGTON** asked what the bill would then accomplish, and why they would pass the bill at all.

**SEN. NELSON** said that there are other things in the bill such as the grants. The transportation grant would be changed, but there is still a combined fund grant and a general fund grant.

**Ms. Quinlan** advised if the transportation portion is taken out, what remains is the school facility payments the state makes to help support schools that have general obligation bonds. It increases the school facility entitlements which have not been increased for ten years. None of this costs any more to the state, because it's a fixed appropriation for school facilities. The third piece is in the allocation of block grants. That is an advantage to schools over time as their priorities shift.

**SEN. JOHNSON** asked about page 1 of the fiscal note.

**Ms. Quinlan** advised the **HB 124** block grants that are currently allocated to the school district debt service fund will be

eliminated, and a school that has a general obligation bond that services payments would be eligible for funding based on the wealth of the district.

**SEN. NELSON** said that the amendment will get rid of weighted rider-ship and the rates they will be paying per bus. The other part is the block grants for transportation.

**Ms. Quinlan** advised the reason for the language on page 7 that talks about 1/2 of the average amount is because the other half is used to fund the rate increases.

**SEN SCHMIDT** asked if there will be any harm to the districts as a result. **Ms. Quinlan** advised taking out the transportation part, school districts will be left at their current level.

**SEN. STONINGTON** said if the amendment passes, they also need to amend Section 6, Page 7, Line 19.

*{Tape: 5; Side: A}*

**Vote:** Motion carried unanimously by voice vote.

**Motion:** SEN. NELSON moved that SB 424 DO PASS AS AMENDED.

**Discussion:**

**SEN. STONINGTON** asked what the bill does after the amendment.

**Ms. Quinlan** explained that the bill will use money allocated for **HB 124** block grants for debt service based on who's eligible. It will also allow schools to use the remaining block grant where it best meets a school's priorities.

**SEN. McCARTHY** asked if the money coming in to the state does not necessarily go out to the same counties.

**Ms. Quinlan** advised the money doesn't necessarily go out to the same school districts.

**CHAIRMAN ZOOK** added that it allows schools that have been ineligible for facility grants to be eligible for loans and **Ms. Quinlan** affirmed that.

**Vote:** Motion carried 16-3 with SENS. ESP, BARKUS and JOHNSON voting no by voice vote.

**EXECUTIVE ACTION ON SB 323**

Motion: SEN. COBB moved that SB 323 DO PASS.

Motion: SEN. COBB moved that SB 323 BE AMENDED (SB032315.ace).

**EXHIBIT**(fcs64a12)

Ms. Quinlan explained the amendment. She advised this is the only school funding bill left where the language can be clarified.

Vote: Motion carried unanimously by voice vote.

Motion: SEN. BARKUS moved that SB 323 DO PASS AS AMENDED.

Discussion:

SEN. STONINGTON shared that for the Bozeman school district, this bill results in a shortfall of \$637,000 for the elementary district, and she couldn't support the bill.

Vote: Motion carried 10-9 with SENS. COBB, COONEY, McCARTHY, NELSON, SCHMIDT, SHEA, STONINGTON, TESTER, and TROPILA voting no by roll call vote.

*{Tape: 5; Side: A; Approx. Time Counter: 3 - 7.8}*

EXECUTIVE ACTION ON SB 61

Motion: SEN. TESTER moved that SB 61 BE RECONSIDERED.

Discussion:

SEN. TESTER said the bill would allow MTANG firefighters at the Great Falls airport to transfer to FURS. The fiscal note is \$149,000 for 2004, etc. He proposed moving the effective date to May of 2005.

Vote: Motion failed 9-10 with SENS. COBB, COONEY, McCARTHY, NELSON, SCHMIDT, SHEA, STONINGTON, TESTER, and TROPILA voting yes by roll call vote.

*{Tape: 5; Side: A; Approx. Time Counter: 7.6 - 11.9}*

EXECUTIVE ACTION ON SB 458

Motion: SEN. COBB moved that SB 458 DO PASS.

Motion: SEN. COBB moved that SB 458 BE AMENDED (SB045801.atp).

**EXHIBIT**(fcs64a13)

**Discussion:**

**SEN. COBB** advised the amendment takes out Sections 2 and 3, and the bill then only applies to one company.

**Ms. Purdy** briefly explained the amendment.

**SEN. BARKUS** asked what the amendment does to the bill.

**John Fitzpatrick, Northwestern Energy**, advised the amendment removes Sections 2 and 3 which deal with the general merger statute.

**SEN. BARKUS** asked how this would affect the lawsuit.

**Mr. Fitzpatrick** advised Section 1 preserves the shield they were trying to obtain. They would like to have Sections 2 and 3 because they think it bolsters their case, but they can live without them.

**{Tape: 5; Side: A; Approx. Time Counter: 11.9 - 17.5}**

**Vote:** Motion carried unanimously by voice vote.

**Motion:** **SEN. COBB** moved that SB 458 DO PASS AS AMENDED.

**Discussion:**

**SEN. SCHMIDT** inquired if **SB 458** interferes in the legal process.

**Susan Good, representing the Plaintiffs**, explained that **SEN. SCHMIDT** was correct.

**SEN. SCHMIDT** asked about the ratepayers and shareholders.

**Ms. Good** stated that the purpose of this bill is to make sure shareholders don't get their day in court. The case was filed in August 2001 as a last chance for recourse. When Northwestern purchased the entire business, including assets and liabilities, they were aware the lawsuit was part of that.

**{Tape: 5; Side: A; Approx. Time Counter: 17.5 - 22}**

**SEN. SCHMIDT** expressed her concern that a company could have as many lawyers as they wanted, and the citizens aren't represented.

**SEN. SHEA** shared a letter from **Robert Poor**, a shareholder and attorney who opposes Northwestern being a part of the lawsuit.

**SEN. LAIBLE** asked if the lawsuit will still go forward against companies other than Northwestern. **Ms. Good** agreed, stating that she mis-spoke. She was quite certain the lawsuit would go forward against others.

**SEN. LAIBLE** asked if the lawsuit will go on and Touch America is still involved. **Ms. Good** expected so.

**SEN. BARKUS** asked for clarification that she is representing the claimants.

**Ms. Good** advised she was asked to participate by the attorneys for the Plaintiffs.

**SEN. MCCARTHY** added that an attorney stated that regardless of the outcome of the bill, the lawsuit would go forward.

**SEN. COONEY** expressed his concern with the whole issue. He didn't know if Northwestern should or should not be involved in the lawsuit. He thought they are being asked to apply the law to a certain set of facts. He was not sure the legislature is the institutional body that should be dealing with this; the court system is the branch of government, an equal branch of government, that is designed to deal with these matters. He was concerned about setting a precedent. The lawsuit should be allowed to move forward and the courts can decide.

**SEN. STONINGTON** said that she cannot vote for something that is a legal issue. The legislature sets policy and the courts make judgments on disputes within that policy. She said that this was written by Northwestern for Northwestern. The policy decision is whether the legislature is ready to say Northwestern is not implicated in this lawsuit. She didn't know if their job is to decide the innocence of one company in a lawsuit. They knew what the laws were and made their acquisition under current law. This is an immunity for one business. She was offended by the way the title is written--providing protection for shareholders of an innocent third party purchaser.

***{Tape: 5; Side: A; Approx. Time Counter: 22 - 30.8}***

**SEN. JOHNSON** stated this transaction was the only one voted on by stockholders.

**SEN. BARKUS** said that there is comfort in knowing that 150 elected officials will have the ability to make the decision, rather than one judge.



**Vote:** Motion carried 12-7 with SENS. COONEY, ESP, NELSON, SCHMIDT, STAPLETON, STONINGTON, and TESTER voting no by roll call vote.

***{Tape: 5; Side: B; Approx. Time Counter: 0 - 8.3}***

**EXECUTIVE ACTION ON SB 218**

**SEN. ESP** advised the gray bill with the amendments creates a statewide public defender program to come on board July 1, 2004. It allows for administration to be set up starting July 1, 2003. It sets up parameters for how those county employees can become state employees. The mechanism to administer the program will be the Department of Administration. The existing Appellate Defender Commission will be combined into a Public Defender Commission that includes both criminal defense and public defense. There is language in the bill that creates a contingency fund to allow the Judiciary and the **Department of Administration** to access that fund to handle overruns and variable expenses. Part of the bill goes into effect July 1st, 2003, and the rest will go into effect on July 1st, 2004.

**Motion:** SEN. ESP moved that SB 218 DO PASS.

**Motion:** SEN. ESP moved that SB 218 BE AMENDED (SB021803.av1).

**EXHIBIT**(fcs64a14)

**Discussion:**

**SEN. MCCARTHY** asked if there would be a full hearing in the committee. **CHAIRMAN ZOOK** answered that it was heard in Subcommittee, and advised the Committee could get their questions answered.

**SEN. ESP** said he would like to get amendments on the bill.

**CHAIRMAN ZOOK** acknowledged the subcommittee had done a lot of work.

**SEN. ESP** advised the **Judiciary Committee** members of the subcommittee were **SEN. MIKE WHEAT, SEN. JEFF MANGAN, SEN. DAN MCGEE** and **SEN. JERRY O'NEIL**. **Senate Finance Committee** members were **SEN. NELSON, SEN. BUTCHER, SEN. TROPILA** and himself.

**SEN. NELSON** stated that the bill will need a fiscal note, and it should be requested immediately.

**SEN. ESP** advised part of the purpose is to get the amendments on the bill. There can't be a fiscal note different from the original one until the amendments are on.

**SEN. STAPLETON** asked if the amendments were contentious or unanimous. **SEN. ESP** said that they were adopted unanimously.

***{Tape: 5; Side: B; Approx. Time Counter: 8.3 - 14}***

**SEN. SCHMIDT** asked them to speak to the amendments. **CHAIRMAN ZOOK** suggested that the Committee vote, and then address the bill as a whole.

**Vote:** Motion carried unanimously by voice vote.

**SEN. ESP** explained that the next two amendments didn't come out of the Committee.

**SEN. WHEAT** advised this had to do with court assumption and the lawsuit against the state involving indigent defense. The Subcommittee decided on a statewide Public Defender System, combining both the trial and appellate side. He went through the Gray Bill section by section. **EXHIBIT (fcs64a15)** They wanted to amend the bill to say the compensation of these former county employees who become state employees will be what they were earning on July 1, 2003.

***{Tape: 5; Side: B; Approx. Time Counter: 14 - 30}***

***{Tape: 6; Side: A; Approx. Time Counter: 0 - 7}***

**SEN. STAPLETON** asked about the court IT being taken care of in a different mechanism. **SEN. ESP** responded that the intent is to strip that section out; it was only in there for the purpose of meeting the transmittal deadline.

**CHAIRMAN ZOOK** stated that the Committee would hear from the Chief Justice and MACO and leave further action for another day.

**Chief Justice Karla Gray, Supreme Court**, said that conceptually, this is a terrific bill. She is still concerned about the Judicial Branch's budget being underfunded. She stated they have some concerns about the fiscal note.

***{Tape: 6; Side: A; Approx. Time Counter: 7 - 11.2}***

**Gordon Morris, MACO**, stated that his counties support the bill.

**Motion/Vote:** SEN. ESP moved that SB 218 BE AMENDED ("Amendment B" - EXHIBIT(fcs64a16)). Motion carried unanimously by voice vote.

**Motion:** SEN. ESP moved that SB 218 BE AMENDED (SB021802.agp). EXHIBIT(fcs64a17)

**Discussion:**

SEN. COONEY asked about the amendment of SEN. ESP. SEN. ESP advised they recommended the bill as amended to come to **Senate Finance**. He didn't think there was time to go back to the subcommittee for the amendment.

SEN. COONEY asked if the amendment was agreeable to the other members of the Subcommittee. SEN. ESP stated that he couldn't speak for those not present, but those present said that they were agreeable to the amendment.

SEN. BUTCHER advised he was very comfortable with the amendment.

SEN. NELSON advised this is new, and it is something they need to think about and fit it in there.

CHAIRMAN ZOOK said it just protects the state.

SEN. WHEAT stated that he is not sure the Committee can dictate who will or will not be responsible for any of the liability that results from the lawsuit.

CHAIRMAN ZOOK argued earlier this evening there was a bill about a company purchasing another one and a lawsuit.

SEN. WHEAT advised he disagreed with the committee's decision in that case. That's the reason for separation of powers. He appreciated what SEN. ESP is trying to do, but it's the court's job to sort that out after hearing all of the testimony.

SEN. BALES asked if this amendment would help protect the State.

SEN. WHEAT responded that the lawsuit has already been filed, and he didn't see how the legislature could dictate responsibility in the case. The lawsuit was brought by the ACLU and others concerning inadequate indigent defense. The court will have to decide if the reasons for that are the result of the county or as a result of the state's failure to adequately fund this.

**SEN. JOHNSON** asked if they could settle the situation by an agreement with the counties that they accept all the liability in the case being brought against them. **SEN. WHEAT** said they can enter into any agreement they want, prior to the court's decision. He thought adopting **SB 218** would go a long way towards mitigating any damages the court may find in this lawsuit.

**SEN. ESP** withdrew his motion.

**SEN. ESP** asked if the Committee would like a quarterly reporting to the **Interim Legislative Finance Committee**. **CHAIRMAN ZOOK** and **SEN. NELSON** agreed it should be included.

Action on **SB 218** was postponed until a further date.

*{Tape: 6; Side: A; Approx. Time Counter: 11.2 - 25}*

**ADJOURNMENT**

Adjournment: 7:00 P.M.

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SEN. TOM ZOOK, Chairman

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PRUDENCE GILDROY, Secretary

TZ/PG

**EXHIBIT (fcs64aad)**